

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JACK AND SANDRA M. SANGUIN }

For Appellants: Jack Sanguin,
in pro. per.

For Respondent: Terry' Collins
Counsel

O P I N I O N .

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Jack and Sandra M. Sanguin for refund of personal income tax in the amount of \$342.40 for the year 1976.

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The issue presented is whether appellants, who were California residents, are entitled to a tax credit for net income taxes paid to Idaho on income earned while performing personal services outside of Idaho.

During the year at issue, Mr. Sanguin (hereafter appellant) was employed by the State of Idaho Department of Insurance. The record indicates, though, that appellant spent less than five days of that year actually in Idaho, but instead performed those services in Utah. In 1976, appellants filed state individual income tax returns in both Idaho and California. In Idaho, appellants filed as nonresidents and paid \$484 in Idaho state income taxes. In California, appellants filed as full-year residents but claimed a credit of \$261 for taxes paid to Idaho. On audit, **respondent** disallowed this credit, contending that since the income which generated the tax paid to Idaho was not earned in that state, no credit was allowable under the provisions of Revenue and Taxation Code section 18001. Appellants paid the additional assessment, plus interest, and filed a claim for refund. Respondent's denial of that claim led to this appeal.

Revenue and Taxation Code section 18001 provides, in pertinent part, as follows:

Subj-ect to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

(a) The credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

The regulation interpreting section 18001 of the Revenue and Taxation Code, insofar as pertinent, allows resident taxpayers a credit only for taxes imposed by and paid to another state on income from personal services performed within such state and taxable under that state's laws irrespective of the taxpayers' **residence** or domicile. (Cal. Admin. Code, tit. 18, reg. 18001-2, subd. (a).) The effect of the regulation is to consider the source of the income as the place where the services are performed. Of course, an interpretative regulation adopted by an administrative agency charged with enforcing

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a statute is entitled to great weight, and its language should be given full effect, unless clearly erroneous. (See Coca-Cola Co. v. State Board of Equalization, 25 Cal.2d 918 [156 P.2d 1] (1945).)

Decisions of this board have also held that the source of income from personal services is the place where the services are performed. (Appeal of Leland M. and June N. Wiscombe, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Charles W. and Mary D. Perelle, Cal. St. Bd. of Equal., Dec. 17, 1958; Appeal of Robert C. Thomas and Marian Thomas, Cal. St. Bd. of Equal., April 20, 1955.) As indicated above, even appellant himself admits that the personal services for which he was paid in the year at issue were not performed within Idaho, but in Utah. Accordingly, based on the record before us, we have no alternative but to find that the income upon which the tax was paid was not derived from sources within Idaho and, as a consequence, no credit is allowable pursuant to Revenue and Taxation Code section 18001, subdivision (a), for the taxes paid to Idaho.

While it may be true that appellants could have filed for a refund of taxes paid to Idaho for 1976, appellants appear to argue that respondent's allegedly slow and inadequate replies to their inquiries prevented them from doing so and that, at this late date, such a course of action is not open to them. Accordingly, appellants apparently contend that respondent should be estopped from disallowing the subject credit at this time.

As a general rule, an estoppel will be applied against the government in a tax case only where the facts clearly establish that grave injustice would otherwise result: (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal.2d 865, 869 [3 Cal.Rptr. 675, 350 P.2d 715] (1960); Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) Four conditions must be satisfied before the estoppel doctrine can be applicable: the party to be estopped must be apprised of the facts; the other party must be ignorant of the true state of the facts; the party to be estopped must have intended that its conduct be acted upon, or so act that the other party had a right to believe that it was so intended; and the other party must rely on the conduct to his injury. (California Cigarette Concessions, Inc. v. City of Los Angeles, supra; City of Long Beach v. Mansell, 3 Cal.3d 462, 489 [91 Cal.Rptr. 23, 476 P.2d 423] (1970).) Appellants have presented no evidence which establishes such conditions. Under these circumstances, we fail to

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perceive any basis for applying the doctrine of equitable estoppel against respondent.

For the foregoing reasons, we conclude that respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board **on file** in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Jack and Sandra M. Sanguin for refund of personal income tax in the amount of \$342.40 for the year 1976, be and the same is hereby sustained.

Done at **Sacramento**, California, this 15th day of September , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9